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December 20, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, DC 20551

Re: Truth in Lending Proposed Rule: Regulation Z Part 226; Docket No. R-1390

Dear Members of the Federal Reserve Board,

We write on behalf of Land of Lincoln Legal Assistance Foundation's Homeownership Task Force. This letter is in response to the proposed changes to the regulations under the Truth in Lending Act. Organized in 1972, Land of Lincoln Legal Assistance Foundation, Inc. is an Illinois not-for-profit corporation whose mission is to pursue civil justice for low-income persons through representation and education. Our goals are: (1) to promote economic security, adequate shelter and health care; (2) to alleviate domestic violence and improve family stability; and (3) to advance the interests of vulnerable populations. Land of Lincoln is the sole provider of the full range of legal services for low-income persons in 65 counties in central and southern Illinois.

We have helped hundreds of low-income homeowners seeking assistance with their mortgages because they are facing foreclosure. As part of the services we provide to homeowners, we examine their mortgage documents to determine whether they have any defenses or remedies, including those provided by the Truth in Lending Act, that they can assert in foreclosure.

Therefore, we write to express our extreme dismay with the proposed changes to the TILA rules governing mortgage lending promulgated in FRB Docket No. R-1390. Specifically, the proposed changes to the right of rescission threaten to dismantle the strongest consumer protection homeowners have to avoid predatory mortgages and stop foreclosure. ***We urge you to withdraw FRB Docket No. R-1390 and allow the Consumer Financial Protection Bureau to update TILA regulations when it assumes responsibility for these protections in July 2011.***

However, if you do not withdraw the docket and decide to pursue changes, our comments regarding the proposal are below. Some of the changes proposed by the Federal Reserve Board offer increased consumer protections, including the new material disclosures for home secured credit and those regarding reverse mortgages. However, in an attempt to be brief, this letter will

highlight those proposed changes we think need the most significant revision because they fail to protect consumers.

Rescission

We were shocked in reviewing the proposed rule to find that the Federal Reserve Board, in making changes to Regulation Z, intends to destroy one of the strongest consumer protections of the Truth-in-Lending Act, the right of rescission. At a time when countless beleaguered homeowners struggle to keep their homes from being foreclosed, this is not the time to eliminate a significant tool homeowners have to stop foreclosure and escape predatory mortgages. Land of Lincoln Legal Assistance Foundation has assisted numerous homeowners by reviewing their Truth-in-Lending disclosures and sending a rescission notice if the disclosures were not properly provided. We have also assisted homeowners when creditors have failed to respond to rescission notices or honor rescission by filing affirmative claims. Finally, we have represented homeowners in foreclosure and asserted rescission as a defense. In affirmative suits and foreclosure defense cases, rescission has aided our clients in saving their homes as rescission provides a strong incentive for lenders and servicers to modify loans.

As 12 C.F.R. §226.15 and 226.23 are currently written, after the homeowner sends a notice of rescission to the creditor, the creditor is required to cancel the security interest and void the mortgage. After the creditor cancels the security interest, the homeowner must tender the amount still owed on the loan. This sequence is crucial to providing consumers the protection that rescission is intended to offer. Once the security interest is void, the homeowner has a defense to foreclosure. It also gives the homeowner the opportunity to refinance to tender the amount due or negotiate a modification with the current creditor. It does not give the homeowner a “get your home for free” card. The homeowner still must pay the balance owed. However, the use of rescission has allowed Land of Lincoln Legal Assistance Foundation to negotiate with lenders so that our clients can escape predatory loans with exorbitant interest rates and inflated fees. Some of our clients have obtained modifications that made their loans affordable.

The changes proposed by the Board would require a homeowner to tender the entire amount demanded by the creditor before the creditor is required to cancel the security interest in the home. This reversal in the sequence of rescission renders this provision useless to aid distressed homeowners. Rescission would no longer be a tool that Land of Lincoln clients could use as a defense to foreclosure or to unwind abusive mortgages; our clients do not possess the financial resources to tender *before* the security interest is cancelled by the creditor. Therefore, our clients would no longer have the ability to save their home through rescission.

Furthermore, the proposed changes to rescission allow creditors to hold homeowners hostage. The changes require a homeowner to tender *the amount demanded by the creditor* before the security interest is cancelled. A homeowner has no means of challenging the amount demanded by the creditor before the security interest is cancelled. Recent cases such as *In re Stewart* demonstrate the myriad ways in which servicers add bogus fees to the amounts owed by a borrower. *In Re Stewart*, 391 B.R. 327 (E.D. La. 2008). However, to rescind, a homeowner would have to tender the full amount, including bogus fees, before the loan is void.

The extended right of rescission is a powerful tool to get lenders to follow the strict disclosure requirements of the Truth in Lending Act. These disclosure requirements assist our

clients in shopping for a good mortgage. The current foreclosure crisis has shed light on the ways banks and mortgage servicers play fast and loose with mandatory requirements including truthful affidavits and endorsed notes. Absent rescission, lenders and creditors may fail to comply with the Act's stringent disclosure requirements because the financial penalties are insignificant. Rescission provides a substantial stick to get them to comply.

Coverage Test for 2008 HOEPA Final Rule and HOEPA

Additionally, we are concerned with the proposed 12 C.F.R. §226.35 which intends to revise how to determine whether a mortgage is a "higher-priced mortgage loan" subject to the Board's 2008 HOEPA Rule. The Board proposes to no longer use the APR as the indicia to determine whether the transaction is a higher priced mortgage and instead would introduce a "coverage rate" that a creditor could compare to the prime offer rate that would not be disclosed to consumers. This undisclosed "coverage rate" undermines the transparency that the Truth in Lending Act intends to promote to ensure that consumers have accurate information in shopping for credit.


Material Disclosures


We are also concerned about the proposed changes to "material disclosures." The Board proposes to remove the "itemization of all one time fees imposed by the creditor for use with the home equity plan" from its definition of material disclosures and allow a creditor simply to provide a total amount. This would be a serious blow to consumers, who use the itemization to determine what each fee is, the amount, and whether it is bona fide and reasonable. Without an itemization, the door is opened to creditors to tack on inflated and fraudulent fees, giving rise to predatory lending.

Furthermore, the elimination of amount financed, number of payments, and total number of payments from the definition of material disclosures also threatens consumers' ability to understand their mortgages and specific terms, including the length of the loan. The Truth-in-Lending Act was enacted to help consumers shop for credit; eliminating these disclosures undermines the purpose and increases the likelihood that a consumer will be misled about his or her loan.

Thank you for your consideration of these comments. There are many other issues which merit comment; for those, we refer the Board to the comprehensive comments provided by the National Consumer Law Center. We looked forward to the Board's adoption of strong consumer protections in the near future

Sincerely,


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